STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

WISCONSIN ENERGY CORPORATION, INTEGRYS ENERGY GROUP, INC. PEOPLES ENERGY, LLC, THE PEOPLES GAS LIGHT AND COKE COMPANY, NORTH SHORE GAS COMPANY, ATC MANAGEMENT INC. and AMERICAN TRANSMISSION COMPANY LLC	)	
Application pursuant to Section 7-204 of the Public Utilities Act for authority to engage in a Reorganization, to enter into agreements with affiliated interests pursuant to Section 7-101, and under the Public Utilities Act to effectuate the Reorganization.	)	Docket No. 14-0496

THE PEOPLE OF THE STATE OF ILLINOIS' AND THE CITY OF CHICAGO'S REPLY TO THE RESPONSES OF THE JOINT APPLICANTS AND THE STAFF OF THE ILLINOIS COMMERCE COMMISSION TO THE AG/CITY MOTION TO EXTEND THE SCHEDULE

The People of the State of Illinois ("the People" or "AG"), by Lisa Madigan, Attorney General of the State of Illinois; and the City of Chicago ("City"), by its counsel (collectively the Governmental Intervenors"), pursuant to Section 7-204(d) of the Public Utilities Act ("the Act"), and Part 200 of the Illinois Commerce Commission's ("the Commission" or "ICC") rules, 83 Ill.Admin.Code § 200.190, hereby file their Reply to the Responses filed by the ICC Staff and the Joint Applicants ("JA", consisting of Wisconsin Energy Corporation ("WEC"), Integrys Energy Group, Inc. ("Integrys"), Peoples Energy, LLC, the Peoples Gas Light & Coke Company ("Peoples Gas," "PGL" or "the Company"), North Shore Gas Company, ATC Management Inc. and American Transmission Company LLC) on January 12, 2015 to the AG/City Motion to Extend the Schedule filed on January 2, 2015 (the "Motion").

In their Response, the Joint Applicants challenge both the "foreseeability" of the changed circumstances highlighted in the AG/City Motion that demand an extension of the schedule in this docket and the relevance of the Liberty audit reports. The Joint Applicants' Response essentially invites the Commission to ignore the imminent availability of the Liberty Consulting Group Interim and Phase I Final Reports, which will inform the Commission's statutory determinations by documenting any flaws in the current operation of PGL's AMRP and recommending the changes needed to ensure cost-effective, reliable and safe utility service. This imminent availability was not known to the Governmental Intervenors at the time this proceeding was initiated. Other facts not known at the time this proceeding was initiated include testimony on poor Accelerated Main Replacement Program ("AMRP") cost management; the lack of detail by the Joint Applicants on their plans to manage or improve AMRP performance; and the Joint Applicants' resistance to commit to implement Audit Report recommendations except only under certain heavily-qualified contingencies. The JA Response further argues that it is under no obligation to detail its capabilities or willingness to implement audit recommendations going forward, because management of the AMRP is not relevant to this reorganization proceeding. The Joint Applicants' interpretation of the Public Utilities Act ("PUA" or "the Act") is improperly narrow and, if followed, would render the Commission's evaluation under Section 7-204 of the Act meaningless, by dismissing factors (identified in the Motion) that threaten the safety and adequacy of PGL's regulated services and the reasonableness of its rates.

Moreover, Staff's Response, a presumed attempt to forge a compromise between the opposing positions at issue in the Motion, falls short because it would also prevent the Commission from fulfilling its obligations under Section 7-204 of the Act. As discussed below,

if Staff's proposal is adopted, the Commission would not have the information it needs to determine whether (1) "the proposed reorganization will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service;" (2) "the proposed reorganization is not likely to result in any adverse rate impacts on retail customers," and (3) any conditions on its approval are necessary to protect utility and ratepayer interests. 220 ILCS 5/7-204(b)(1), (b)(7), (f).

For the reasons discussed below, the Commission should grant the AG/City Motion to Extend the Schedule. In support of this Reply, the Governmental Intervenors state as follows:

I. Reasonably Unforeseeable Changes in Circumstances Arising After the Initiation of this Proceeding Require an Extension of the Schedule.

As the Joint Applicants acknowledge at page 5 of their Response, Section 7-204(d) of the Act allows the Commission to extend the deadline for approving a proposed reorganization for up to three months. One of the permitted bases for an extension is "reasonably unforeseeable changes in circumstances" subsequent to the applicants' filing. 220 ILCS 5/7-204(d). The Governmental Intervenors argued in their Motion, beginning with the specific points listed on page 2, that recently discovered information and developments in this proceeding – including testimony on poor Accelerated Main Replacement Program ("AMRP") cost management; the lack of detail by the Joint Applicants on their plans to manage or improve AMRP performance; the impending release of a Commission-ordered Interim Audit Report and Final Audit Report regarding the AMRP; and the Joint Applicants' resistance to commit to implement Audit Report recommendations except only under certain heavily-qualified contingencies – together constitute an unforeseeable change in circumstances that necessitates an extension of the schedule, by up to three months. The Joint Applicants assert, however, that no unforeseeable change in

circumstances has arisen since their initial filing on August 6, 2014. JA Response at 5. The Joint Applicants' arguments isolate and attack individual aspects of the confluence of circumstances the Governmental Intervenors rely on as change the justifying an extension. At no point do the Joint Applicants address the implications of the combination of factors that arose after the filing of the Joint Applicants' petition. That circumstance could not have been foreseen by the Governmental Intervenors. In addition, as the Governmental Intervenors will show below, even the Joint Applicants' arguments respecting individual elements of the confluence of circumstances defined in the AG/City Motion are erroneous.

1. The Liberty Audit Timeline Was Not Known At The Time This Proceeding Was Initiated.

First, the Joint Applicants correctly note that the Commission ordered an audit investigation of PGL's AMRP in its Order[1] in Docket Nos. 12-0511/0512 (cons.), PGL's 2012 rate case (the "2012 Rate Case Order"). JA Response at 6. The Commission's 2012 Rate Case Order adopted the recommendations of ICC Staff witness Buxton, who proposed a "two-phase investigation of the AMRP . . . ending in a public document report." 2012 Rate Case Order at 61. Mr. Buxton recommended that the auditor should "provide testimony in a future rate case presenting the consultant[']s first phase investigation report to the Commission."[2] He also proposed a "two-year verification period following the Phase I investigation" whereby the engineering consultant that performed the first-phase audit investigation would "verify that Peoples has implemented the recommendations from the Phase I investigation."[3] Under this

[1] Order, Docket Nos. 12-0511/0512 (cons.), June 18, 2013, at 61; *see also* Docket Nos. 12-0511/0512 (cons.), ICC Staff Ex. 20.0 at 3-9 (attached as Exhibit 1 to the JAs' Response).

[2] Docket Nos. 12-0511/0512 (cons.), ICC Staff Ex. 20.0 at 8:148-149.

[3] *Id.* at 3:57-4:60.

plan, the auditor would also provide testimony in a future rate case presenting the second-phase verification report.[4]

The Commission later hired Liberty Consulting Group ("Liberty") to conduct the audit ordered in the 2012 Rate Case Order, as Staff witness Lounsberry stated in his direct testimony in this proceeding. Liberty's Final Audit Report is due by April 29, 2015. Staff Ex. 2.0 at 12:270-13:276. However, prior to the filing of Mr. Lounsberry's direct testimony on November 20, 2014, the People and the City were unaware of the timeline of the investigation pursuant to the Commission's 2012 Rate Case Order. The Commission released an announcement[5] approximately one month after the 2012 Rate Case Order stating that it had issued a Request For Proposals for the audit, but it never publicly acknowledged the retention of Liberty, or the due date of late April 2015 for the Phase I report, before Mr. Lounsberry's direct testimony in this proceeding. Additionally, following the initiation of this proceeding, the Governmental Intervenors learned that an Interim Audit Report would be released by Liberty in January, 2015. Thus, while the Joint Applicants state in their Response at 6 that "the process for and pendency of the Liberty Audit was known for *over a year* prior to the Joint Applicants filing their Application on August 6, 2014" (emphasis in the original), the *timeline* of Liberty's audit investigation was completely unknown to non-participants and was thus reasonably unforeseeable within the meaning of Section 7-204(d) of the Act. It was not known to the People nor the City until November 2014, well after this case was initiated, that the Interim Audit Report would be available in January 2015 or that the Final Audit Report would be available by April 2015. In light of this unforeseeable change in circumstance, it is vital that the schedule of

[4] *Id.* at 8:150-151.

[5] *ICC Seeks Auditor for Peoples Gas Main Replacement Program*, July 24, 2013, *available at* http://www.icc.illinois.gov/downloads/public/PeoplesGasauditRFP.doc.

this proceeding be extended to allow all parties an opportunity to comment on the recommendations in the Interim Audit Report as well as the Joint Applicants' responses to those recommendations, as the Governmental Intervenors recommended in their Motion.

It is also important that the briefing schedule in this proceeding be extended to allow Liberty's Final Audit Report, due to be released by late April, to become part of the record. As the Joint Applicants admit, the Interim Audit Report "will be preliminary in nature and not reflect the full results of Liberty's work." JA Response at 7. If Liberty's final audit report is issued in April 2015, as Staff witness Lounsberry indicated in this docket[6], and if the Joint Applicants adopt a two-year rate freeze for PGL such that the Commission's next PGL rate order is not issued until approximately July 2017[7], then, despite the acknowledged criticality of PGL's AMRP, a reorganization that could exacerbate a flawed infrastructure program will be years in the past before the issues raised by the Final Audit Report are addressed. If the Final Audit Report is not the subject of testimony and briefing in this docket, but rather is entered into the record of PGL's next rate case, the Commission would not have an opportunity to issue any directive pursuant to the final report of Liberty's first phase investigation until *two years and three months* after the release of the Final Audit Report. In the meantime, assuming approval of the proposed reorganization with its continuation of PGL's deficient AMRP implementation, if only Liberty is observing PGL's compliance with the Final Audit Report recommendations, as contemplated by the 2012 Rate Case Order[8], over two years could go by without effective

[6] Staff Ex. 2.0 at 12:273-274.

[7] JA Ex. 6.0 at 35:865-866.

[8] Mr. Buxton's testimony, adopted by the 2012 Rate Case Order at 61, contemplates that the auditing consultant would spend two years following release of the Final Audit Report verifying PGL's compliance therewith. Docket Nos. 12-0511/0512 (cons.), ICC Staff Ex. 20.0 at 3:57-4:60.

remediation of PGL's poor management of the AMRP, with all attendant cost overruns and rate impacts that implies.

Thus, it is *even more important* than the Interim Audit Report that the Commission consider the recommendations in Liberty's Final Audit Report in this proceeding to decide whether the proposed reorganization would not diminish PGL's ability to provide adequate, reliable, efficient, safe, and least-cost public utility service pursuant to Section 7-204(b)(1) of the Act, and whether the proposed reorganization would not be likely to result in adverse rate impacts to customers pursuant to Section 7-204(b)(7) of the Act. The Joint Applicants' promise to continue "as is" the implementation of a program that the Commission found to be significantly flawed in its 2012 Rate Case Order, as well as their unwillingness to commit to implement Liberty's recommended curative measures, make it difficult, if not impossible, for the Commission to make the required statutory findings in this case. The Joint Applicants must demonstrate that WEC is at least as competent – and more important, fully prepared – as Integrys would be to implement the recommendations in Liberty's Final Audit Report. Thus, as the Governmental Intervenors requested in their Motion, the schedule for this proceeding should be extended to allow the Joint Applicants an opportunity to file testimony in response to the Final Audit Report.

2. The Numerical Evidence of PGL's Cost Mismanagement of the AMRP and the Joint Applicants' Cavalier Attitude Thereto Were Not Known At The Time This Proceeding Was Initiated.

The Joint Applicants cavalierly dismiss the revelations in the Governmental Intervenors' direct testimony regarding PGL's severely poor cost management of the AMRP as mere "allegations" and "historical information" and thus not unforeseeable. JA Response at 7. But

the statements in the testimony of AG witness Coppola and City/CUB witness Cheaks[9], summarized at paragraphs 9 and 10 on pages 10-11 of the Governmental Intervenors' Motion, are based on the Joint Applicants' own responses to data requests in this case, which information was clearly not available to the People and to the City at the outset of this reorganization proceeding. It is this historical data of poor AMRP management that the Commission should consider carefully in deciding whether WEC has the resources and the will to responsibly handle what is clearly a very challenging program. Moreover, even if certain deficiencies may have been generally known to the Governmental Intervenors at the time of filing, the Joint Applicants' apparent lack of concern about PGL's AMRP (evinced by the Joint Applicants' lack of due diligence review of the program and their refusal to provide any substantive response to the specific concerns raised) could not reasonably have been foreseen, given the size and importance of the programs..

The "allegations" and "historical information" concerning AMRP go back further than this case. In its 2012 Rate Case Order, the Commission found that

> Part of the problem with the AMRP is the lack of detail. Staff examined Peoples' submissions to Staff DR ENG 2.12, which asked for a detailed explanation of its five-year plan for the AMRP, including all costs. They found: "There is no discussion of costs in the White Paper. There is no discussion of resource requirements or project management. The response to Staff DR ENG 2.12 states that the AMRP budget for 2013 is $220.75 million, but does not explain how Peoples arrived at that number and Attachment 01, the White Paper, does not address the issue

[9] The Joint Applicants also mischaracterize a data request response from the City in attempting to describe the AG/City description of AMRP data as "mischaracterized or misleading." JA Response at 8. The JAs attach as Exhibit 2 to their Response a set of data requests wherein, they say, Mr. Cheaks "admitted that Peoples Gas cannot avoid incurring degradation fees in the course of performing its AMRP and its daily non-AMRP operations and maintenance work." JA Response at 8. However, the Joint Applicants omit the portion of Mr. Cheaks's response to data request JA CC 2.54 wherein he stated that "Peoples Gas could minimize degradation fees with better planning and scheduling decisions." This evidence of PGL's inefficiency is fundamental to the Commission's decision as to whether WEC has the resources to avoid falling into the same cycle of inefficiency as it takes control of the AMRP.

> either." [Staff Ex. 20] at 19. Additionally, Peoples also stated that they "have not determined the funding level past the year 2013". *Id.* Attachment 20.02.

2012 Rate Case Order at 61.

What is new and unforeseen about these recurring "allegations" and "historical information" is the Joint Applicants' cavalier response to them. As stated in the Motion, despite having had two opportunities in pre-filed testimony to explain how they will modify and improve AMRP implementation, "it remains unclear what impact a new corporate parent … will have on the [program]. Motion at 5-6. Indeed, after AG witness Coppola and City-CUB witness Cheaks submitted direct testimony roundly criticizing Peoples Gas's management of the AMRP, the JAs chose not to deign these critiques with a "point-by-point refutation" (JA Response at 8, n. 3). It is the Joint Applicants' indifference to past complaints about AMRP management and implementation and, if past is prologue, what will likely be additional criticisms lodged by Liberty in its Interim and Final Audit Reports that constitute unforeseen circumstances. The Joint Applicants' indifferent attitude towards the recurring problems with the AMRP could not be known by Staff, Governmental Intervenors, or any other party at the outset of this proceeding, as it was not articulated until after the Joint Applicants submitted their rebuttal testimony in this case.

3. The Joint Applicants' Reluctance to Straightforwardly Comply With The 2012 Rate Case Order Directing PGL To Implement Audit Report Findings Was Not Known At The Time This Docket Was Initiated.

The Governmental Intervenors agree that language in JA witness Leverett's rebuttal testimony[10] filed December 18, 2014 regarding the implementation of Liberty's audit was in response to proposed conditions from Staff witness Lounsberry, as the Joint Applicants note. JA

[10] JA Ex. 6.0 at 16:426-444.

Response at 9. However, the Joint Applicants' position that PGL (under the direction of WEC) shall have the discretion to decline to comply with any one of Liberty's recommendations based on a PGL determination that it is not "possible to implement, practical [or] reasonable,"[11] subject only to the agreement of the Staff (and no other party) and possibly the oversight of the Commission following filing of a petition, defines a process with the "potential for significant remediation delays," as the Governmental Intervenors stated in their Motion at 7. It is this JA position refusing to commit to remedy documented deficiencies in a safety- and service-critical infrastructure that was "reasonably unforeseeable" within the meaning of Section 7-204(d) of the Act at the time this case was initiated. The 2012 Rate Case Order "directs Peoples to comply"[12] with the ordered investigation, following the recommendations in that rate case of Staff witness Buxton, who stated that the auditor should "work during th[e] Phase II two-year period to verify that Peoples has implemented the recommendations from the Phase I investigation."[13] Mr. Buxton's recommendations, adopted by the Commission in the 2012 Rate Case Order, did not add any caveats, qualifications, or conditions to PGL's obligation to comply with the audit recommendations, in sharp contrast to the list of contingencies that JA witness Leverett introduced in his rebuttal testimony.

4. The Michigan Schedule Extension Is Not Based On Identical Facts Or Law But Shows that An Extension May Be Necessary To Protect Ratepayer Interests.

Finally, while the Joint Applicants attempt to distinguish the recent extension of the schedule by the Michigan Public Service Commission in that commission's WEC-Integrys reorganization docket, the Governmental Intervenors were not attempting to argue in their

[11] *Id.* at 16:430-431.

[12] Order, Docket Nos. 12-0511/0512 (cons.), June 18, 2013, at 61.

[13] Docket Nos. 12-0511/0512 (cons.), ICC Staff Ex. 20.0 at 3:59-4:60.

Motion that the facts or legal standards applicable to that commission's schedule extension were identical to those before the Commission in this proceeding. Rather, the Governmental Intervenors were simply arguing that, similar to the reasons given by the movant in the Michigan proceeding, "[h]ere, too, there are substantial rate implications and, indeed, safety and service reliability issues, tied to the Joint Applicants' response to any Audit Report findings." Motion at 15. The Governmental Intervenors have shown in this Reply and in their Motion that Illinois's Section 7-204(d) standards for a three-month schedule extension are met.

In summary, the Joint Applicants have not provided any reason to think that the unforeseen circumstances outlined by the Governmental Intervenors in their Motion were somehow foreseeable when the Joint Applicants filed their reorganization petition in August of 2014.

II. Peoples Gas' Management of the AMRP and the Liberty Consulting Group Audit of the AMRP Are Highly Relevant to the Commission's Approval of Wisconsin Energy Corporation's Acquisition of the Common Stock of Integrys Under Section 7-204.

In Part II of their Response, the Joint Applicants argue that PGL's management and implementation of its AMRP are "independent of" and "not relevant to" the Commission's statutory determinations in this proceeding. The Joint Applicants are wrong.

The Joint Applicants reach their flawed conclusion (a) through a narrow, self-serving interpretation of the relevant statute, to put all AMRP questions "beyond the appropriate scope of this Section 7-204 proceeding," and (b) by dismissing factors (identified in the Motion) that threaten the safety and adequacy of PGL's regulated services and the reasonableness of its rates, if the reorganization is approved as proposed.

1. The Joint Applicants' Interpretation of Section 7-204 Misconstrues the Language, Purpose, and Operation of Section 7-204.

The Joint Applicants' relevance argument is, in essence, that the Commission must approve any proposed reorganization that meets the Joint Applicants' narrowly defined "do no harm" standard. As the Joint Applicants put it, "[t]he purpose of a Section 7-204 proceeding is for the Commission to determine whether a proposed reorganization will adversely affect a public utility's ability to perform its duties under the Act." "[R]ecommendations to improve the management and implementation of AMRP . . . [are] beyond the appropriate scope" of this proceeding. JA Resp. at 11. That construction of the statute is not consistent with the language of the relevant statutory provisions. Section 7-204 is not designed to give utilities free rein to reorganize as they wish as long as they profess to do no harm. Reorganizations must satisfy the specific threshold requirements of Section 7-204(b), since "the Commission shall not approve any proposed reorganization if the Commission finds . . . that the reorganization will adversely affect the utility's ability to perform its duties." 220 ILCS 5/7-204(b). The Commission is also statutorily obligated to determine if a proposed reorganization will have an "adverse impact" on retail customers' rates. 220 ILCS 5/7-204(b)(7). *In addition*, the Commission is charged with determining and imposing "such terms, conditions or requirements as, in its judgment, are necessary to protect the interests of the public utility and its customers." 220 ILCS 5/7-204(f).

Section 7-204(b)(1) requires that the Commission find that "the proposed reorganization will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service," as a pre-condition to approval of a proposed reorganization. In this case, the Joint Applicants argue to narrow that criterion to ask only whether the reorganization will have "any adverse impact with respect to the implementation of the Liberty Audit

recommendations." JA' Resp. at 14. The real issue is whether the Joint Applicants' reorganization plan -- to blithely continue PGL's flawed implementation of its expensive, safety-critical, and service enhancing AMRP "as is" -- will adversely affect PGL's ability to provide safe and adequate service in the future. Section 7-204(b)(7) requires that the Commission determine that "the proposed reorganization is not likely to result in any adverse rate impacts on retail customers," before approving a reorganization. Yet, the Joint Applicants argue unpersuasively that the impact on rates of costly deficiencies in PGL's AMRP management and construction performance is not appropriately examined in this case. The Joint Applicants construe these provisions as part of a checklist for approval. That reading is unsupported by the statutory language or any cited authority.

It is important to recognize that Section 7-204 *constrains* Commission authority. Section 7-204 does not specify any circumstances under which the Commission *must* approve a proposed reorganization. The Section 7-204(b) criteria define evidentiary findings the record must support and the Commission must make, *before* the Commission has any authority to approve a reorganization. Equally important is a clear recognition that the threshold preconditions of Section 7-204(b) are not a comprehensive check list of the requirements for Commission approval, as the Joint Applicants suggest. The Section 7-204(b) threshold findings are necessary for any approval, but they are not sufficient to require approval.

Finally, the Joint Applicants do not even acknowledge -- much less address -- the Commission's broad Section 7-204(f) authority and duty to protect the interests of a regulated utility and the utility's customers. Section 7-204(f) provides: "In approving any proposed reorganization pursuant to this Section the Commission may impose such terms, conditions or requirements as, in its judgment, are necessary to protect the interests of the public utility and its

customers." Under that provision, the Commission's authority to determine and impose reorganization conditions is bounded only by the needs for utility and ratepayer protection shown in record evidence and the Commission's own determination of the conditions required to protect those interests.

Moreover, none of the required Section 7-204 determinations are time-limited in the way the Joint Applicants' argument suggests. The Joint Applicants would have the Commission determine whether there is an adverse impact from the proposed reorganization by comparing the state of affairs (for the utility and its customers) immediately before and immediately after the proposed "stock transaction." JA Resp. at 11 (accepting that the Liberty Audit may document AMRP deficiencies and safety or service related corrections, but resisting examination of the Joint Applicants' plan to continue the AMRP without change). The Commission cannot reasonably assess the impact of a permanent action that will have long term effects, most of which will not be immediately realized,[14] if it uses the Joint Applicant's preferred narrow comparison.

The Joint Applicants' argument to prevent the Commission from examining the long term safety, service, and rate effects of the Joint Applicants' stated plan to continue PGL's AMRP "as is" -- using the same problematic management protocols and personnel -- cannot be squared with the statutory mandate to examine long-term impacts and to determine what is needed to protect ratepayer and utility interests.

2. The Joint Applicants' Relevance Arguments Are Factually Unsupported

[14] Identifying adverse effects of the proposed reorganization similarly requires a longer term assessment. Indeed, the Joint Applicants, for example, rely on a longer view to support their assertion that the reorganization will eventually yield financial benefits. Similarly, the Joint Applicants claim that ratepayer benefits in savings from the reorganization will not be realized immediately, but only over a longer period.

The Joint Applicants concede the importance of AMRP to the safety and adequacy of PGL's service to ratepayers in the future, noting the Commission's response to earlier reports of deficiencies in PGL's AMRP implementation. JA Resp. at 1-2, 6. The Joint Applicants recite the procedural particulars of the Commission's order in Peoples Gas' 2012 rate case, but they do not recount the Commission's conclusion that:

> Peoples Gas' distribution system… is approaching the point that further aging and deterioration will eventually cause replacement to maintain public safety to become an emergency matter.

2012 Rate Case Order at 61.

The Joint Applicants' plans for the conduct and completion of this program are critical to PGL's future ability to meet its statutory service obligations, and the Joint Applicants' treatment of PGL's massive AMRP investment will continue to be a significant (if not the main) driver of rate changes experienced by PGL's customers. Motion at 4. The relevance to the findings required by Section 7-204 is clear.

Yet, the Joint Applicants argue that PGL's AMRP "existed before" and is "independent from" the proposed reorganization. JA Resp. at 4. On that basis, the Joint Applicants oppose the examination of plans, impacts, and potential remedies Section 7-204 requires. In fact, the proposed reorganization will have direct effects on the implementation of PGL's AMRP investment plan, with consequences for PGL's service to ratepayers and a significant impact on customers' rates.[15] Despite alleging that the "stock transaction" will have no direct effect on

[15] Despite claims of benefits from improved access to capital to fund the AMRP, the Joint Applicants have not identified any mechanism to flow such benefits to PGL and its customers. The Joint Applicants' contradictory claims of retention of local management and improved performance through the application of WEC expertise and applying best practices (presumably if local management agrees), perpetuates the organizational uncertainty regarding AMRP design and planning, the roles of AMRP personnel employed by the affiliate services company, and possible changes in the personnel who create, implement, and maintain relationships with the City and other stakeholders. All these circumstances can lead to costly inefficiencies and other impacts.

AMRP, the Joint Applicants concede the relevance of the acquiring entity's plans for AMRP when they ask the Commission to look to "Wisconsin Energy's *highly relevant* experience with overseeing infrastructure investment programs as large or larger than the AMRP." JA Ex. 6.0 at 19:506-508 (emphasis added). The Commission must examine the "highly relevant" effect of reorganization on the AMRP and the AMRP's impacts on PGL's customers, under the terms of the proposed reorganization. 220 ILCS 5/7-204(b)(1), (b)(7).

If approval of the proposed reorganization is seen as ratifying the Joint Applicants' stated intention to continue a poorly-performing program that almost guarantees adverse rate or service impacts, the consequences are relevant to the Commission's statutory determinations in this proceeding. The Joint Applicants' stated post-reorganization plan for PGL's AMRP -- to continue the construction project without modification of plans or personnel[16] -- has not been altered, despite extensive evidence of serious deficiencies in PGL's current implementation. Motion at 9-11. Continuing PGL's AMRP at the current unacceptable level of performance (even with heavily conditioned promises regarding Liberty Audit recommendations) can compromise PGL's future ability to provide safe, adequate, and efficient service. The Joint Applicants' commitment to continue flawed AMRP management and construction practices provides no value for ratepayers or regulators, and it promises only unacceptable (possibly declining)[17] outcomes, while almost assuring dramatic rate increases.

[16] At the same time, the Joint Applicants rely inconsistently on "Wisconsin Energy's highly relevant experience with overseeing infrastructure investment programs as large or larger than the AMRP." JA Ex. 6.0 at 506-508. Implicitly, WEC (the acquiring firm) must be directly and closely involved, or this experience cannot provide any assurance that the largest capital construction program in PGL's history will be completed competently and efficiently.

[17] The persistence of many of the problems previously identified by the Commission (and acknowledged by the Joint Applicants), despite the Joint Applicants' claimed efforts to remedy past problems, suggests that outcomes could worsen in the future, if AMRP performance does not outpace the system declines that supported AMRP.

Commission ratification of a dysfunctional AMRP implementation process through approval of the proposed reorganization absolutely will harm PGL's ratepayers. If the Commission seeks to avoid an implied ratification, it must examine the impact of the proposed post-reorganization management plans and make a determination of the conditions it must order as conditions of any approval, to protect ratepayers against unintended effects.

Second, the Joint Applicants do not challenge the evidence of AMRP implementation deficiencies. Instead they rely on a statement of disagreement and their deliberate failure to "submit a point-by-point rebuttal" to the evidence that PGL's AMRP performance is inefficient (inflating AMRP costs) and ineffective (threatening timely completion of needed safety and service improvements). The combination of unrebutted evidence of serious deficiencies in the AMRP (a program the Commission found necessary to stem an approaching safety/service emergency) and the Joint Applicants' rigid commitment to continue the program "as is" require that the Commission examine the likely consequences and possible remedies. 220 ILCS 5/7-204(b)(1), (b)(7), (f).

The Joint Applicants speculate that the Governmental Intervenors' purpose is "to transform this proceeding into an investigation and workshop on improving Peoples Gas' AMRP performance." JA Resp. at 12. In fact, the Governmental Intervenors wish to preserve the statutory objectives of this proceeding, so that the Commission identifies any adverse safety, service, or rate impacts of the proposed reorganization and determines what (if any) conditions are necessary to protect the interests of the utility and its customers. Contrary to the Joint Applicants' claims, the AG/City Motion's focus is not the Liberty Audit (JA Resp. at 11-13), but what the audit can tell the Commission about the impact the Joint Applicants' lack of effective

post-transaction AMRP implementation plans will have on service and rates for PGL's customers.

The Joint Applicants' answer to each of these concerns is that "[r]egardless of its corporate parent, Peoples Gas would be bound to follow the Commission's orders." The PUA assumes (and requires) that utilities subject to Commission jurisdiction will abide by Illinois law. But, even with that assumption, Section 7-204 requires the Commission to determine whether conditions on any approval are necessary to protect the interest of the utility and its customers, and if so, what conditions. In this context, the Joint Applicants' apparent disinterest[18] in the future of the largest infrastructure program in PGL's history is a related concern that the Commission must consider in deciding how best to protect the interests of the utility being acquired and its customers.

To minimize the apparent impacts of a reorganization, the Joint Applicants emphasize the mechanism for the proposed change of ownership, characterizing the entire reorganization as a mere stock transaction. JA Resp. at 4. Relying on that characterization, the Joint Applicants argue that the conduct of AMRP is irrelevant to this proceeding. However, this "stock transaction" would remove ultimate control over PGL's AMRP to an out-of-state entity that has shown little interest in addressing the AMRP's well-documented problems.

The Governmental Intervenors do not argue that this case presents the Commission's only opportunity to address PGL's AMRP performance or the Liberty Audit. But it is the Commission's only opportunity to determine whether the proposed reorganization will be approved and, if so, on what terms. Whether the acquiring company in the proposed reorganization succeeds wildly or fails miserably in achieving the rosy picture the Joint

[18] *See* Motion at 13.

Applicants paint, as a practical matter the Commission cannot undo the reorganization. An approved reorganization will be permanent, and it will have long-term consequences that may not be correctable later. The Joint Applicants argue for a procedural ruling that denies the Commission the opportunity to examine a full record concerning the current state of PGL's AMRP, the impact of a reorganization commitment to continue the program "as is," and the impact on customer service and rates of continuing a flawed program. The identification and imposition of specific conditions to protect ratepayers and PGL cannot be done in any other proceeding.

III. Staff's Proposed Limitation on the Use of the Audit Report and Proposed Schedule Will Not Permit The Commission to Assess the Merger Application Under Section 7-204 of the Act.

Staff's Response, a presumed attempt to forge a compromise on the dueling positions at issue in the Motion, falls short because it denies the Commission the opportunity to fulfill its obligations under Section 7-204 of the Act. As discussed below, if Staff's proposal is adopted, the Commission would not have the information it needs to determine whether (1) "the proposed reorganization will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service;" (2) "the proposed reorganization is not likely to result in any adverse rate impacts on retail customers," and (3) any conditions on its approval are necessary to protect utility and ratepayer interests. 220 ILCS 5/7-204(b)(1), (b)(7), (f).

Staff first implies that the Interim Report has little *substantive* value in this proceeding, noting that "the report is not final" and "an additional docketed proceeding may be initiated to address the final report; or, as contemplated by the Commission's final order in Docket Nos. 12-0511/0512 (Cons.), the First Phase Investigation Final Report could be introduced in a future rate

case proceeding." Staff Response at 3, 4. Staff then offers that its "purpose in introducing the Interim Audit Report into evidence in this docket is to make clear to the Joint Applicants and the Commission the possible scope and scale of the obligations they would be undertaking in the event the merger is approved, and to afford them the opportunity to assure themselves as well as the Commission that they are ready, willing and able to implement the AMRP consistent with the directives in the Commission's Orders in Docket Nos. 09-0166/09-0167 (Cons.) and Docket Nos. 12-0511/12-0512 (Cons.) and with Liberty's findings in the audit, in light of these obligations." *Id.* at 4. That said, Staff asks that the purpose of the audit report be limited by the Administrative Law Judge to "(1) whether the Joint Applicants are aware of the scope and scale of the potential obligations under AMRP; and (2) whether Joint Applicants are ready, willing and able to implement the AMRP consistent with additional remedies as recommended by the Liberty audit." *Id.* Staff then proposes a schedule for all parties to respond to the Report on January 22, 2015 with replies to those responses filed on January 29, 2105. *Id.* at 5. Presumably, those responses and replies would be in the form of testimony, although it is unclear from the pleading. *Id.*

These conclusions and recommendations, however, are inadequate for the Commission's statutory obligations under Section 7-204, for several reasons. First, the AMRP, for better or worse, is the centerpiece of PGL's delivery service and has large, if not the largest, rate impacts of any PGL project. How well and how efficiently AMRP performs has had, *and will continue to have*, significant impacts on ratepayers, from safety, service quality and rate impact perspectives. *See* AG/City Motion at 4, par. 3. While the January report may be "Interim," it also constitutes the best and only evidence the Commission has in this docket of the auditors' conclusions to date. Meaningful Commission consideration of utility and ratepayer interests in

this proceeding requires an intensive review of the problems detailed in the Interim Audit Report by qualified experts. Those responses, whether by the Joint Applicants' experts or those of Staff or other parties, should not, and likely cannot, be performed within seven days. Nor should admission of the contents of the Interim Audit Report be restricted in this docket from their use as evidence of the matters asserted in the Report. Indeed, Staff's restrictions could render the report's contents irrelevant to the statutory issues in this proceeding, calling into question its admission for such limited purposes.

In addition, the Commission must be apprised *in this docket* of the Joint Applicants' plans for the future operation of PGL's AMRP and whether the impact of approving a reorganization premised on those plans will have adverse impacts. That review is incomplete without consideration *in this record* of (1) the Interim and (2) Final Phase I Audit reports, ordered by the Commission to investigate earlier performance deficiencies, which still persist (as highlighted in the testimony of the Governmental Intervenors' experts), and (3) the Joint Applicants' planned response to the findings contained therein.

Contrary to the Joint Applicants' repeated reference to this proceeding being consideration of a mere "acquisition of Integrys' common stock" (JA Response at 4, 5 and 11), the General Assembly recognized that such an acquisition can have a direct impact on utility rates, safety, reliability and service quality, among other issues. 220 ILCS 5/7-204(b). The law requires the Commission to assess *within this proceeding,* how that acquisition will affect those areas of regulatory concern and customer impact. Separately, the General Assembly provided the Commission with broad authority, under Section 7-204(f), to determine whether any approval conditions are necessary to protect utility and ratepayer interests in such a proposed reorganization. Unless the audit reports, both interim and final, are included in the record in this

case, along with appropriate responses to those findings, the Commission will be unable to assess the impacts on "[PGL's] ability to provide adequate, reliable, efficient, safe and least-cost public utility service," and will be unable to determine whether "the proposed reorganization is not likely to result in any adverse rate impacts on retail customers" and what "terms, conditions or requirements…, in its judgment, are necessary to protect the interests of the public utility and its customers." 220 ILCS 5/7-204(b)(1), (b)(7), (f).

Moreover, Staff's (and the Joint Applicants') reference to future Commission proceedings after the completion of the audit is too little too late. Circumstances have changed since the Commission entered its order in Docket 12-0511/0512 and called for a docketed proceeding *after* the completion of the audit reports to assess the findings. Since the issuance of the 2012 order, the pending reorganization application was filed with the Commission. Neither the Commission nor ratepayers can wait for an analysis of those findings in some future docket given the requested reorganization. Section 7-204 of the Act makes clear that the Commission has the obligation *now and in this docket* to assess the evidence related to the Joint Applicants' ability to provide safe, reliable and least cost utility service. The Interim Audit Report and, in a few months, a Final Phase I Audit Report, along with responses in testimony to those reports, constitute relevant evidence available to the Commission. The Commission must consider that evidence before it can assess how the acquisition of Peoples Gas will impact ratepayers, consistent with its obligations under Sections 7-204(b)(1), (b)(7) and (f) of the Act. 220 ILCS 5/7-204(b)(1), (b)(7), (f).

The bottom line is that Staff's proposed solution is simply not sufficient for the Commission to fulfill its statutory obligations in this docket. The Commission already knows, based on pre-filed testimony, that the Joint Applicants have heavily conditioned their promised

response to the audit findings. *See* AG/City Motion at 6-7, citing JA Ex. 6.0 at 16. Requiring the Joint Applicants to file a Response within a week to tell the Commission "whether the Joint Applicants are aware of the scope and scale of the potential obligations under AMRP" becomes meaningless within the context of their December 18, 2014 Rebuttal testimony, which answers Staff's second question with a heavily conditioned promise, including provisions for litigation of refusals to implement audit recommendations. Further, in fairness to the Joint Applicants, requiring testimony that seriously addresses the question of "whether Joint Applicants are ready, willing and able to implement the AMRP consistent with additional remedies as recommended by the Liberty audit" is not possible within the timeline Staff recommends.

No party has explained why extending the schedule by three months will harm the Joint Applicants – presumably the focus of Staff's proposed compromise. While WEC and Integrys shareholders may be eagerly awaiting resolution of the various regulatory proceedings involved in the proposed transaction, the Commission's interest here is overseeing the utility it regulates and ensuring that reliability, safety, service quality and rates are not negatively impacted by the proposed acquisition,, not appeasing holding company stockholders. The General Assembly has clearly identified "the interests of the public utility and its customers"" as the interests in need of protection in this proceeding. 220 ILCS 5/7-204(f). It is not the job of the Commission to ensure a decision on the Joint Applicants' preferred timeline if the Commission lacks the necessary information to perform its duties under Section 7-204 of the Act

IV. Conclusion

WHEREFORE, consistent with their arguments in this Reply and in their Motion, the People of the State of Illinois and the City of Chicago respectfully request that the Commission

extend the schedule of this proceeding pursuant to Section 7-204(d), in accordance with the schedule recommended at pages 15 and 16 of their Motion to Extend the Schedule.

Respectfully submitted,

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